

**BOISE, WEDNESDAY, JANUARY 2, 2008 AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	
<b>Plaintiff-Respondent,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 34172</b>
	)	
<b>WILLIAM ARTHUR,</b>	)	
	)	
<b>Defendant-Appellant.</b>	)	
	)	

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Appeal from the District Court of the First Judicial District of the State of Idaho,  
Kootenai County. Hon. John Thomas Mitchell, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

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William Arthur was charged with grand theft, I.C. § 18-2403, 18-2407; burglary, I.C. § 18-1401; and resisting and obstructing officers, I.C. § 18-705. He was also charged with being a persistent violator, I.C. § 19-2514, based on four prior Washington State felony convictions for first degree rape of a child, second degree robbery, second degree assault, and taking a motor vehicle without permission. On the day the case was set for trial, Arthur entered an *Alford* plea to grand theft and admitted to being a persistent violator in exchange for dismissal of the other charges. Prior to sentencing, Arthur moved the district court to withdraw his plea after seeing his presentence investigation report. The district court denied the motion after hearing testimony and oral argument. The district court sentenced Arthur to a unified term of life imprisonment, with a minimum period of confinement of two years. Arthur filed an I.C.R. 35 motion for reduction of sentence, presenting new information to the district court that he was seriously ill. The district court granted the motion and reduced Arthur's sentence to a unified term of life imprisonment, with a minimum period of confinement of one year and ten months. Arthur appealed, and the Court of Appeals heard his case.

In its opinion, the Court of Appeals determined that the district court had not abused its discretion when denying Arthur's motion to withdraw his guilty plea, and also that the district court had not abused its discretion by reducing Arthur's determinate sentence by only two months when granting his Rule 35 motion. He then petitioned this Court for review.

On appeal, Arthur argues that the district court abused its discretion by denying his motion to withdraw his plea. He also argues that this Court should expressly adopt a rule reviewing a defendant's entire sentence, rather than presuming the determinate portion of a sentence is the probable term of confinement. Finally, he argues that the district court abused its discretion by reducing his sentence by only two months.

**BOISE, WEDNESDAY, JANUARY 2, 2008 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**LARRY SPENCER,**

**Petitioner-Appellant,**

**v.**

**KOOTENAI COUNTY, a political  
subdivision of the STATE OF IDAHO, acting  
through the KOOTENAI COUNTY BOARD  
OF COMMISSIONERS, in their official  
capacities,**

**Respondent.**

**Docket No. 33060**

Appeal from the District Court of the First Judicial District of the State of Idaho,  
Kootenai County. Hon. Charles Weeks Hosack, District Judge.

Ian D. Smith, Coeur d'Alene, for appellant.

John A. Cafferty, Kootenai County Legal Services, Coeur d'Alene, for  
respondent.

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Larry Spencer applied for a site disturbance permit to construct a 24-foot wide common driveway to serve two adjoining parcels of real property near Hayden Lake. Spencer subsequently applied for preliminary subdivision approval for the same property. The Kootenai County Building & Planning Department refused to approve a permit for a 24-foot wide driveway prior to preliminary subdivision approval, but indicated it would approve a 20-foot driveway to serve the parcels. Spencer appealed this decision. A hearing examiner heard his case and recommended denial of the 24-foot wide driveway. Spencer again appealed and the Board of Commissioners affirmed. Next, Spencer sought judicial review in district court. The district court affirmed the Board, and Spencer filed a Petition for Rehearing and Motion to Augment the Record to include his Preliminary Geotechnical Engineering Evaluation, Site Disturbance Plan Report, and Site Disturbance Plan for Access Road, which he claims were contained in his initial application. The district court denied both motions. Spencer appeals to the Idaho Supreme Court, asserting the County violated his substantive and procedural due process rights and acted arbitrarily and capriciously when it denied his site disturbance permit. In addition, he alleges the district court erred when it denied his motion to augment the record.

**BOISE, WEDNESDAY, JANUARY 2, 2008 AT 11:10 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

SAFE AIR FOR EVERYONE, )  
)  
**Plaintiff-Appellant,** )  
)  
v. )  
)  
**IDAHO STATE DEPARTMENT OF** )  
**AGRICULTURE, an agency of the State of** )  
**Idaho, SHERMAN K. TAKATORI, in his** )  
**capacity as ISDA Crop Residue Disposal** )  
**Program Manager, BRUCE** )  
**CHITTENDEN, in his capacity as ISDA** )  
**Rathdrum Smoke Coordinator, JAN** )  
**CHITTENDEN, in her capacity as ISDA** )  
**Rathdrum Prairie Smoke Coordinator,** )  
**BOYD LINDSAY, in his capacity as ISDA** )  
**Palouse Airshed Smoke Coordinator,** )  
**RITA IVERSON, in her capacity as ISDA** )  
**Clearwater Airshed Smoke Coordinator,** )  
**HEIDI VANDYKEN, in her capacity as** )  
**ISDA Boundary County Smoke** )  
**Coordinator,** )  
)  
Defendants-Respondents. )

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**Docket No. 33729**

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Kathryn A. Sticklen, District Judge.  
Karen Lindholdt, Spokane, for Plaintiff-Appellant.  
Hon. Lawrence G. Wasden, Attorney General, Boise, for Defendants-Respondents.

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Safe Air for Everyone (SAFE) appeals the district court's grant of summary judgment in favor of employees of the Idaho State Department of Agriculture (ISDA) on grounds that the court erred in not finding genuine issues of material fact existed as to whether a 2005 End of Year Crop Residue Disposal Program Meeting (the CRDP Meeting) was subject to I.C. §§ 67-2340 – 67-2347, commonly called the Idaho Open Meeting Law.

On January 4, 2006, SAFE filed a complaint against ISDA, alleging a breach of I.C. §§ 67-2340 to 67-2347. SAFE is an association of persons that monitors the burning of crop residue in northern Idaho. ISDA is a group of ISDA employees. Pursuant to Memoranda of Agreement related to smoke management plans for agricultural field burning in Kootenai, Benewah, Latah, Nez Perce, Clearwater, Idaho, and Lewis Counties, and the Coeur d'Alene Indian and Nez Perce Reservations, representatives from the ISDA, the Idaho Department of Environmental Quality (IDEQ), the United States Environmental Protection Agency (EPA), and the Coeur d'Alene Indian and Nez Perce tribes (Tribes) participated in a CRDP Meeting on December 5 and 6, 2005 to discuss specific agricultural field burning-related issues and the Technical Guidance document (Technical Guidance).

The Technical Guidance provides operation guidelines to the ISDA, IDEQ, EPA, and the Tribes for managing agricultural field burning. IDEQ prepares the Technical Guidance with input from the ISDA, EPA, and the Tribes, and is responsible for making any changes to it. In order to revise the Technical Guidance, the IDEQ circulates the proposed changes to all CRDP Meeting participants, any party may disapprove, and no change is made unless all of the parties approve. To date, the IDEQ has made no changes to the 2005 Technical Guidance.

In its complaint, SAFE alleged that the participants in the CRDP Meeting constituted a governing body of ISDA, made decisions at the CRDP Meeting that modified the CRD Program, closed the CRDP Meeting to the public, and failed to give the public notice of the CRDP Meeting in violation of I.C. § 67-2343. SAFE asked the district court to enter a declaratory judgment that all decisions made at the CRDP Meeting were null and void and that a \$150 fine be assessed against each of the named defendant-employees of the ISDA. On April 6, 2006, the district court denied SAFE's motion.

ISDA then moved for summary judgment on August 14, 2006 on grounds that: (1) the multi-government group, consisting of the ISDA, IDEQ, EPA, and the Tribes that convened the CRDP Meeting did not constitute a governing body of a public agency; and (2) the CRDP Meeting was not convened by a governing body of the ISDA to conduct business of the ISDA. SAFE argued that it had raised material issues of fact as to whether: (1) the defendant-employees of the ISDA constituted a governing body pursuant to the Idaho Open Meeting Law; (2) the ISDA conducted a meeting during which decisions and/or recommendations were made; and (3) the meeting was closed to the public.

On October 24, 2006, the district court granted ISDA's motion for summary judgment, finding that because SAFE had failed to establish that the ISDA employees acted as a governing body of a public agency at the CRDP Meeting, or that the meeting itself was a meeting of a governing body of the ISDA, it was uncontroverted that the CRDP Meeting was not subject to the Idaho Open Meeting Law. The district court entered its *Final Judgment* in favor of the ISDA on November 2, 2006, and SAFE timely appealed.

**BOISE, FRIDAY, JANUARY 4, 2008 AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**ADA COUNTY HIGHWAY DISTRICT, a** )  
**body politic corporate of the State of Idaho,** )

**Plaintiff-Respondent,** )

**v.** )

**TOTAL SUCCESS INVESTMENTS, LLC,** )  
**an Idaho limited liability company and B & C** )  
**FAMILY TRUST,** )

**Defendants-Appellants,** )

**and** )

**HOME FEDERAL SAVINGS AND LOAN** )  
**ASSOCIATION, a federally funded thrift;** )  
**IDAHO INDEPENDENT BANK, an Idaho** )  
**banking association; BOISE CITY MSA** )  
**LIMITED PARTNERSHIP, d/b/a VERIZON** )  
**WIRELESS, a Delaware corporation; and/or** )  
**JOHN DOES 1-10 AS TENANTS,** )

**Defendants.** )

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**HOME FEDERAL SAVINGS AND LOAN** )  
**ASSOCIATION, a federally funded thrift,** )

**Cross-Claimant,** )

**v.** )

**TOTAL SUCCESS INVESTMENTS, LLC,** )  
**an Idaho limited liability company,** )

**Cross-Defendant.** )

**Docket No. 32726**

Appeal from the District Court of the Fourth Judicial District of the State of  
Idaho, Ada County. Hon. Joel David Horton, District Judge.

Neal & Uhl, PLLC., Boise, for appellants.

Trout, Jones, Gledhill & Fuhrman, P.A. Boise, for respondents.

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This case involves a dispute over property abutting an alley located between 35th and 36th Streets, which connects State Street and Dewey Street in Boise, Idaho. In 1906, a platted, twelve-foot wide alley was dedicated to the public. In 1957 power poles were placed along the alleyway but were not placed on the outer edge of the boundary line.

Appellant Total Success Investments, LLC (TSI) acquired a parcel of land on State Street in 2001. A portion of the land is leased and is used to operate a cell tower facility. The cell tower facility was constructed in 1997 and was surrounded by a fence. Originally, the fence was not placed on the property line; however, subsequent to TSI's purchase of the land the fence was relocated six feet to the east to match the property line.

Respondent Ada County Highway District (ACHD) filed an action to quiet title, asserting it had acquired a prescriptive easement over a portion of TSI's property pursuant to I.C. § 40-202, and an action for ejectment of the relocated fence. After a court trial, the district court determined ACHD had met the requirements for a prescriptive easement and had the authority to remove the encroaching fence.

TSI raises various issues on appeal. It argues ACHD did not meet the elements of a prescriptive easement, that ACHD's quiet title action is barred by I.C. § 5-202, that I.C. § 40-202 is an unconstitutional taking, that it was entitled to a jury trial on the ejectment claim, and that it was denied due process of law.

**BOISE, FRIDAY, JANUARY 4, 2008 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

UNITED STATES OF AMERICA, )  
)  
Plaintiff-Appellant, )  
)  
v. )  
)  
DOUGLAS SHARP, )  
)  
Defendant-Respondent. )

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**Docket No. 34092**

Certification of Question of State Law from the United States District Court for the District of Utah, Northern Division, Hon. Tena Campbell, Chief District Judge.

Brett L. Tolman, United States Attorney, Salt Lake City, for Appellant.

Steven B. Killpack, Utah Federal Public Defender, Salt Lake City, for Respondent.

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On December 23, 1997, Douglas Sharp (Sharp) pled guilty to felony burglary in the Sixth Judicial District of the State of Idaho. At the February 13, 1998 sentencing hearing, the court withheld judgment under I.C. § 19-2601. While withholding judgment, the court placed Sharp on probation for three years and cautioned that his probation would be extended unless he paid off the money that he owed on fines, costs, and restitution. The court also informed Sharp that he could not possess any firearm or other weapon while on probation. Although Sharp completed the terms of his probation, he did not move for the court to dismiss his withheld judgment as allowed by I.C. § 19-2604.

Roughly five years after completing the terms of his probation, Sharp possessed a firearm, and the United States District Court for the District of Utah filed a felony information against Sharp for possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g). The outstanding withheld judgment for burglary is the predicate felony for the charge. Sharp filed a motion to dismiss, arguing that he is not a convicted felon as defined by the statute because the withheld judgment does not constitute a felony conviction. On February 2, 2007, the United States District Court for the District of Utah filed a *Certification of State Law* on the following question of law: “Does an outstanding withheld judgment based on a guilty plea qualify as a conviction under Idaho law?” This Court accepted certification of the question in its *Order Re: Certification of Question of State Law*, entered on April 19, 2007.

**BOISE, FRIDAY, JANUARY 4, 2008 AT 11:10 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**KATHLEEN BARMORE,**

**Plaintiff-Appellant,**

**v.**

**JOSEPH PERRONE,**

**Defendant-Respondent.**

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**Docket No. 34253**

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Honorable Duff McKee, District Judge.

Marcus, Christian & Hardee, LLP, Boise, for appellant.

J. E. Sutton & Associates, Boise, for respondent.

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On April 23, 2005, Joseph Perrone signed a quitclaim deed purportedly conveying real property located in Star, Idaho to his then-wife Kathleen Barmore. Perrone contends that he did not intend to convey the land at the time the deed was signed, and Barmore contends that evidence to that effect was barred by the parol evidence rule. The magistrate court decided this issue in favor of Barmore, but, following Perrone's appeal, the District Court reversed the magistrate court's decision.



**BOISE, MONDAY, JANUARY 7, 2008 AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**CODY BACCUS,**

**Plaintiff-Appellant,**

**V.**

**AMERIPRIDE SERVICES, INC., JOHN  
DOES I-V, DOE CORPORATIONS I-V,**

### Defendants-Respondents.

**Docket No. 33528**

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable Kathryn A. Sticklen, District Judge.

Simpson & Gauchay, Idaho Falls and Myer and Williams, P.C., Jackson, WY, for appellant.

Stoel Rives, LLP, Boise, for respondent.

Cody Baccus, an employee for Bechtel Bettis, Inc., suffered brain damage after slipping and falling on Bechtel's premises. Bechtel had hired AmeriPride Services, Inc. to place safety mats at specified locations at Bechtel, including the location where Baccus fell. No mat was present at the time or location where Baccus was injured. Baccus sued AmeriPride for negligence, but the District Court granted AmeriPride's motion for summary judgment because it found that AmeriPride owed no duty to Baccus. Baccus appeals from that decision to this Court.

**BOISE, MONDAY, JANUARY 7, 2008 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	
<b>Plaintiff-Respondent,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 33452</b>
	)	
<b>BENJAMIN CASTRO, JR.,</b>	)	
	)	
<b>Defendant-Appellant.</b>	)	

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Appeal from the District Court of the Fifth Judicial District of the State of Idaho,  
Minidoka County. Honorable John M. Melanson, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

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While on probation for possession of methamphetamine, Benjamin Castro Jr. (Castro) was convicted of felony domestic battery in the presence of a child. At the time of his arraignment in August, 2003 a valid no contact order was issued which prohibited contact with Maritza, his then pregnant wife and the victim of the battery. The no contact order stated that it "will remain in effect until further order of the court." In July of 2004, I.C.R. 46.2 was amended to require that no-contact orders contain an end date.

Castro and Maritza's second child was born whilst Castro was still incarcerated. After *pro se* requests from both Castro and Maritza, a temporary conditional modification of the no-contact order was permitted to allow the children to visit their father so long as he remained in prison. Castro was subsequently released on parole. Because she wished no further contact with Benjamin upon parole, the State filed a Motion for No Contact Order on behalf of Maritza in July, 2006. The district court held that the original no-contact order was still valid.

Castro has appealed to this Court requesting review as to whether the district court committed error by not vacating or modifying his original August 2003 no contact order to include an end date as is now required by amended I.C.R. 46.2.

**BOISE, MONDAY, JANUARY 7, 2008 AT 11:10 A.M.**

IN THE SUPREME COURT OF THE STATE OF IDAHO

**STUART MACKAY, an individual,**

**Plaintiff-Appellant,**

**V.**

Docket No. 33829

**FOUR RIVERS PACKING CO., an Idaho corporation,**

**Defendant-Respondent.**

Appeal from the District Court of the Third Judicial District of the State of Idaho,  
Washington County. Hon. Stephen W. Drescher District Judge.

Johnson & Monteleone, L.L.P., Boise, for appellant.

Birch Law Office, Payette, for respondent.

Stuart Mackay sued Four Rivers Packing Co. alleging breach of an oral contract for long-term employment and alleging Four Rivers terminated him because it regarded him as disabled due to his insulin dependent diabetes. Four Rivers moved for summary judgment in district court, which the court granted on both counts. Mackay then submitted an additional affidavit and moved for reconsideration. The district court adhered to its initial decision on reconsideration. Mackay appeals to the Idaho Supreme Court. On appeal, he argues that the district court erred when it held the alleged oral contract fell within Idaho's Statute of Frauds and that Mackay's disability claim failed because his condition did not substantially limit his ability to work.

**BOISE, WEDNESDAY, JANUARY 9, 2008 AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**CHARLES OLIVER LOSSER,**

**Plaintiff-Respondent,**

**v.**

**SHAUNA RAE BRADSTREET,**

**Defendant-Appellant.**

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**Docket No. 33932**

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable D. Duff McKee, Senior Judge.

Uranga & Uranga, Boise, for appellant.

Gale L. Merrick, Boise, for respondent.

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Charles Losser and Shauna Bradstreet are siblings and the sole heirs of their mother, now deceased. Shortly after their mother's death, Bradstreet submitted a holographic will for informal probate. Losser objected and alleged the will was a forgery. Three days before a scheduled trial on the matter, Bradstreet withdrew the holographic will from probate and submitted a previously formally executed will. Both parties agreed that the formally executed will could be admitted to probate and a disinterested third person would serve as the personal representative of the estate.

Losser filed a complaint in district court seeking to recover the costs and attorney fees he incurred in the probate proceeding contesting the validity of the holographic will. Bradstreet moved to dismiss the case under Rule 12(b)(6) of the Idaho Rules of Civil Procedure. The matter was referred to the probate division of the magistrate court, which dismissed Losser's case. Losser appealed to the district court, which reversed the decision of the magistrate. Bradstreet timely appealed to this Court to determine if Losser's complaint states a claim upon which relief can be granted.

**BOISE, WEDNESDAY, JANUARY 9, 2008 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**H. RAY HARRISON and JULIE** )  
**HARRISON, husband and wife,** )

**Plaintiffs-Appellants,** )

**v.** )

**THE BOARD OF PROFESSIONAL** )  
**DISCIPLINE of the IDAHO STATE BOARD** )  
**OF MEDICINE, a subdivision of the State of** )  
**Idaho, Department of Self-Regulating** )  
**Agencies,** )

**Defendant-Respondent.** )

**Docket No. 33862**

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Kathryn A. Sticklen, District Judge.

Rossman Law Group, PLLC, Boise, for appellants.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

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Appellants H. Ray Harrison and Julie Harrison (the Harrisons) filed a complaint against Respondent the Board of Professional Discipline of the Idaho State Board of Medicine (the Board). This complaint alleged the Board was negligent for allowing Dr. Jeffrey Hartford to retain his medical license in light of his history of drug and alcohol abuse and in violation of the Board's requirement that he refrain from use of drugs or alcohol. This complaint was filed with the court on November 14, 2005. The Attorney General's office was served with the complaint on May 10, 2006. The Secretary of State was served with the complaint on June 2, 2006.

On May 26, 2006, the Board filed a motion to dismiss the Harrisons' complaint. The Board argued it had immunity from suit and that the Harrisons failed to serve process within six months of filing their complaint as required by I.R.C.P. 4(a)(2). After a hearing, the district court concluded the Harrisons failed to timely complete service of process and dismissed their complaint. On appeal, the Harrisons argue they complied with the applicable civil procedure rules and that, in the alternative, they have shown "good cause" for their failure to comply with the rules.

**BOISE, WEDNESDAY, JANUARY 9, 2008 AT 11:10 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**IN RE SRBA, CASE NO. 39576 SUBCASE )**

**NO: 29-11609. )**

**----- )**

**CITY OF POCATELLO, )**

**Appellant, )**

**v. )**

**Docket No. 33669**

**THE STATE OF IDAHO, UNITED STATES )**

**OF AMERICA and THE SHOSHONE- )**

**BANNOCK TRIBES, )**

**Respondents. )**

Appeal from the District Court of the Fifth Judicial District of the State of Idaho,  
Twin Falls County. Hon. John M. Melanson, District Judge.

A. Dean Tranmer, City of Pocatello, Pocatello, and White & Jankowski, Denver,  
Colorado, for appellant.

Honorable Lawrence G. Wasden, Attorney General, Boise, for respondent State of  
Idaho.

David Negri, U.S. Department of Justice, Boise and Todd S. Aagaard, United  
States Department of Justice, Washington, D.C., for respondent United States of  
America.

Wolfley Law Office, Pocatello, for respondent The Shoshone-Bannock Tribes.

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The City of Pocatello was established at the intersection of two rail lines crossing the Fort Hall Reservation. The railroad and townsite existed illegally on the reservation because they had been built without the authority of Congress or the permission of the Tribes who resided on the reservation. In 1887, the tribes reluctantly agreed to grant a right-of-way to the railroad and to cede a portion of their lands upon which the town lay. The Cession Agreement contained no provision for water rights for Pocatello. When it was enacted by statute, however, a provision granting the citizens of Pocatello a right to water "in common with" the Indians was inserted. The statute was enacted into law in 1888. For the next hundred years, Pocatello sought water

rights solely under state law. In 1993, Pocatello filed a claim asserting that it was entitled to a federal water right under the 1888 law. A special master in the Snake River Basin Adjudication determined no such right existed, and the district court affirmed on appeal. Pocatello sought review with this Court.

**BOISE, FRIDAY, JANUARY 11, 2008 AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**IN THE MATTER OF THE APPEAL OF: )**

**GRAHAM S. STAFFORD )**

----- )

**NORMA J. STAFFORD, )**

**Plaintiff-Appellant, )**

**Docket No. 33242**

**v. )**

**IDAHO DEPARTMENT OF HEALTH & )**

**WELFARE, )**

**Defendant-Respondent. )**

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable D. Duff McKee, Senior Judge.

Graham Law Office, Boise, for appellant.

Honorable Lawrence G. Wasden, State Attorney General, Boise, for respondent.

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Norma Stafford appeals from the denial of her application for Medicaid benefits on behalf of her husband, Graham Stafford, by the Department of Health and Welfare. The district court affirmed the Department's decision.

On June 4, 2004, Mr. Stafford entered a long-term nursing care facility. Mrs. Stafford filed an application on behalf of her husband with the department for Medicaid benefits on July 29, 2004. The department denied the application, finding that the Staffords owned excess resources and, therefore, did not qualify as indigent.

On January 14, 2003, the Staffords executed a revocable living trust; the corpus of the trust contained their single-family residence. The Staffords are the primary beneficiaries of the trust in addition to six residual beneficiaries. The house was removed from the trust and deeded to Mrs. Stafford, in her individual capacity, on June 23, 2004.

Mrs. Stafford appeals the Department's decision arguing (1) that the department failed to include the corpus of the trust (the house) in the initial resource assessment and (2) that the Staffords met the resource limit by the eligibility determination date (a date different then the initial resource assessment) by deeding the home from the trust to Mrs. Stafford individually. Mrs. Stafford appeals to this Court.



**BOISE, FRIDAY, JANUARY 11, 2008 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**JOE COSTA, an individual,**

**Plaintiff-Counterdefendant-Appellant,**

**V.**

**NELSON BORGES, an individual,**

**Defendant-Counterclaimant-Respondent.**

**Docket No. 33752**

Appeal from the District Court of the Fifth Judicial District of the State of Idaho,  
Jerome County. Hon. John K. Butler, District Judge.

Andrew B. Wright, Twin Falls, for appellant.

William J. Hepworth, Twin Falls, for respondent.

Joe Costa (Costa) and Nelson Borges (Borges) entered into an oral partnership agreement to develop a piece of property. After a breakdown in the partners' relationship, Costa filed an application for Borges's expulsion from the partnership. The district court denied Costa's application and granted a counterclaim by Borges for dissolution of the partnership. Costa appeals the district court's findings and distribution of the partnership's assets.

In August 2004, Costa and Borges orally agreed to develop a fifteen-acre subdivision in Jerome County. The parties agreed that Costa would contribute his expertise in developing property, and that Borges would contribute equipment to clear and level the property. The parties also agreed that they would equally share the expenses and contribute equal labor to the development. In June 2005, there was a breakdown in the parties' relationship.

In September 2005, Costa filed an application in the district court seeking an expulsion of Borges from the partnership and a determination that Borges breached the partnership agreement. Borges filed a counterclaim seeking the dissolution of the partnership and the appointment of a receiver. After a hearing, the district court dissolved the partnership and settled the accounts of the parties based on their contributions to the partnership. The district court also ordered that a backhoe Costa purchased with partnership funds be sold and that the proceeds be deposited into the partnership account.

Costa argues on appeal that the district court erred in finding that the backhoe was a partnership asset rather than a personal asset. Costa also argues the district court erred in finding that Borges did not breach the partnership agreement or dissociate from the partnership.

Borges rejects Costa's arguments, and argues on cross appeal that the district court erred in holding that he was not the prevailing party below.

**BOISE, FRIDAY, JANUARY 11, 2008 AT 11:10 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**DAVID MC ATEE,**

**Claimant-Appellant,**

**V.**

**POTLATCH CORPORATION, Employer,  
and WORKERS COMPENSATION  
EXCHANGE, Surety,**

### Defendants-Respondents.

Docket No. 33342

## Appeal from the Idaho Industrial Commission.

Smith, Cannon & Bond, Lewiston, for appellant.

Randall, Blake & Cox, Lewiston, for respondents.

This an appeal by Claimant, David McAtee (McAtee), from an order of the Industrial Commission denying him worker's compensation benefits for the stated reason that he "failed to show his herniated disc was caused by a compensable accident."

McAtee started working for Potlatch Corporation in 1999. He handled wood products by hand and drove a Hyster, which is a large fork-lift type vehicle used to move stacks of lumber. On March 9, 2004 McAtee experienced an onset of back pain which increased in intensity throughout his shift. McAtee sought medical care and was diagnosed with a herniated disc and spinal degeneration. Potlatch and the surety deny that his injury was work-related.

On appeal, this Court considers whether the Commission's findings were supported by substantial and competent evidence to which the law was properly applied and whether either McAtee or Defendants should be awarded attorney's fees and costs.